



DIRECT SELLING ASSOCIATION

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August 29, 2016

Federal Communications Commission
445 12th Street NW
Room TW-A325
Washington, DC 20554

Re: RingCentral, Inc. Petition
for Expedited Declaratory Ruling
(CG docket No. 02-278)

To Whom It May Concern:

The Direct Selling Association (DSA) is the national trade association for companies that market products and services directly to consumers through an independent, entrepreneurial sales force. In 2015, over 20 million Americans were involved in direct selling in every state, Congressional district and community in the United States, contributing over \$36 billion in sales to the economy. DSA appreciates the opportunity to reaffirm that the intent of the Telephone Consumer Protection Act (TCPA) and independent contractor law is clear that direct selling companies should not be held liable for TCPA violations by their salesforce.

The intent and underlying legal authority of the TCPA is to regulate unsolicited telemarketing activities. In enacting the TCPA, Congress directed the Commission to compare and evaluate alternative methods and procedures for protecting subscribers' privacy rights and evaluate which entities would have the capacity to establish and administer such methods and procedures. Additionally, the Commission was directed to consider whether different methods and procedures should apply to small businesses. Direct selling clearly fits into this category.

DSA has previously submitted comments to the FCC on rules implementing the TCPA in 1992¹ and subsequent comments in 2002² when the FCC considered the national do-not-call registry. In these comments, DSA cited direct sellers' exemptions under various laws from being classified as telemarketers due to direct sellers' contacting current customers with whom they have an established business relationship or contacting a potential customer (who they referred to by a current customer) to set up an appointment.³ The intent of the TCPA and these factors clearly

¹ See, Direct Selling Association Comments on Notice of Proposed Rulemaking Telephone Consumer Protection Act, CG Docket No. 92-90, May 26, 1992.

² See, Direct Selling Association Comments on Notice of Proposed Rulemaking Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, November 22, 2002.

³ *Id.*

distinguish direct sellers from telemarketers, and that direct sellers are not subject to TCPA provisions.

Direct sellers are not “telemarketers” and regulations on telemarketing should not apply to direct selling activities.⁴ Their primary marketing channel is through personal, face-to-face contact with their customers. In addition to using cutting edge mobile and internet payment technologies, direct sellers occasionally use the phone or fax for a variety of reasons in conjunction with their business. Direct sellers need to be able to contact current customers, including calling prospects that have been personally recommended to them by current customers.

Direct selling’s most important asset is its independent, entrepreneurial salesforce, classified as independent contractors under federal law.⁵ Unlike many traditional businesses, more than 90 percent of direct sellers choose to work part-time⁶, setting their own schedules for flexibility and work-life balance, deciding how they are going to run their business. Direct selling companies do not dictate how the independent salesforce runs their businesses outside of monitoring for salesforce members engaging in unethical business practices. In fact, many companies’ independent distributor agreements reiterate the distributor’s required compliance with FCC regulations. Independent distributors are not instructed or directed by companies how, when, and by what means or instrumentalities to engage consumers. This allows their independent consultants to build their business how they choose.

Companies that undertake robust compliance programs for their independent contractors should not be held liable for negligent violations of the TCPA by their salesforce. This is inconsistent with the intent of the TCPA and decades of independent contractor law. Thank you for the opportunity to comment. We would be pleased to answer any questions or provide further information as the FCC sees fit.

Sincerely,

Brian Bennett
Attorney & Manager, Government Relations

⁴ Exemptions from various laws directed at telemarketers. 16 C.F.R. § 310.2(o) (2016); 16 C.F.R. § 310.6(b)(6) (2016); 16 C.F.R. § 429 (2016); 47 C.F.R. § 64.1200(c)(2) (2016).

⁵ 26 U.S.C. § 3508 (2016)

⁶ Direct Selling Association, *2013 Growth and Outlook Survey*.